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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,769	10/12/2005	Gerrit Hollemans	NL 030392	2211
24737 7590 12/24/2009 PHILIPS INTELLECTUAL PROPERTY & STANDARDS P.O. BOX 3001 BRIARCLIFF MANOR, NY 10510				
EXAMINER MONIKANG, GEORGE C				
ART UNIT 2614		PAPER NUMBER		
MAIL DATE 12/24/2009		DELIVERY MODE PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/552,769

Applicant(s)

HOLLEMANS ET AL.

Examiner

GEORGE C. MONIKANG

Art Unit

2614

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 September 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5,9-14 and 16-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5,9-14 and 16-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☒ Certified copies of the priority documents have been received in Application No. 10/552,769.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1, 3, 9-11, 13 & 20-24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, US Patent Pub. 20020003889 A1, in view of Rast, US Patent Pub. 20010046304 A1. (The Fischer and Rast reference are cited in IDS filed 10/3/2007)

Re Claim 1, Fischer discloses a personal audio system comprising: a remotely controllable device, a first controller for remotely controlling the device by sending a first control signal to the device (fig. 3: para 0008: right side of headphone system/first controller), a second controller for remotely controlling the device by sending a second control signal to the device (fig. 5: para 0010: left side of headphone system/second controller), wherein: each of the first controller and the second controller includes an outer surface with a button control area (figs. 3 & 5), and is configured to: be substantially worn by a human ear (figs. 2: para 0007), and at least one of the one or more functions being controlled by the first controller differs from one or more functions being controlled by the second controller (figs. 3 & 5: paras 0008 & 0010: right side of headphone system/first controller; left side of headphone system/second controller; each side of the headset carries different controls); but fails to disclose the controller

includes an outer surface with a touch-sensitive area (Rast, para 0055); and is configured to detect a touching of touch-sensitive area (Rast, para 0055) and to send the control signal to control one or more functions of the personal audio system based on the touching (Rast, para 0055) as taught in Rast. It would have been obvious to use the touch sensitive area of Rast (Rast, para 0055) with the personal audio system of Fischer for the purpose of creating easier control by the user.

Re Claim 3, the combined teachings of Fischer and Rast disclose a system as claimed in claim 1, wherein at least one of the controllers is arranged to detect a predefined temporal pattern in the touching of the touch-sensitive area (Rast, para 0055), and to send the corresponding control signal in response to detecting the temporal pattern (Rast, para 0055).

Claim 9 has been analyzed and rejected according to claim 1.

Re Claim 10, the combined teachings of Fischer and Rast disclose a system as claimed in claim 1, including a touch-detecting device coupled an other touch-sensitive area (Rast, para 0055: touch patterns will be able to detect touch from a user), but fails to explicitly disclose whereby the touch-detecting means measures internal resistance of a part of the human body that touches the touch-sensitive area. However, it would have been obvious for one of ordinary skill to measure the resistance of human body that touches the touch sensitive area for the purpose of being able to detect the touch patterns of Rast.

Re Claim 11, the combined teachings of Fischer and Rast disclose a system as claimed in claim 10, wherein the touch detecting devices is configured to perform a

temporal pattern analysis (Rast, para 0055: touch patterns will be able to detect touch from a user), that converts an output signal of the touch-detecting device into an indication of one or more defined temporal patterns of the output signal (Rast, para 0055: touch patterns will be able to detect touch from a user).

Re Claim 13, the combined teachings of Fischer and Rast disclose a system as claimed in claim 1, wherein the touch sensitive area of at least one of the controllers detects a pressure with which the touch-sensitive area is touched (Rast, para 0055: touch patterns will be able to detect touch from a user).

Claim 16 has been analyzed and rejected according to claim 1.

Claims 20-21 have been analyzed and rejected according to claim 1.

Re Claim 22, the combined teachings of Fischer and Rast disclose the device of claim 21, but fail to explicitly disclose wherein the indication of touching of the first earbud causes a volume of the output signals to increase, and the indication of touching of the second earbud causes the volume to decrease. However, since the Fischer reference discloses that each earpiece has different controls (Fischer, figs. 3 & 5; paras 0008 & 0010: right side of headphone system/first controller; left side of headphone system/second controller; each side of the headset carries different controls), it would have been the designer's preference to set up the controls in any which order such that the touch control for increasing a volume is on one headset and the touch control for decreasing the volume is on the other headset etc for the purpose of making the system more dynamic.

Claims 23-24 have been analyzed and rejected according to claim 22.

4. Claims 2, 12 & 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, US Patent Pub. 20020003889 A1 and Rast, US Patent Pub. 20010046304 A1 as applied to claim 1 above, in further view of Ito, JP 11-220788. (The Ito reference is cited in IDS filed 9/10/2009)

Re Claim 2, the combined teachings of Fischer and Rast disclose a system as claimed in claim 1, but fail to explicitly disclose wherein each controller is arranged to fit substantially in a human ear concha, such that the touch-sensitive area is accessible for touching when the controller is fitted substantially in the concha. However, the Ito reference discloses an ear insert type earphone with push keys on the outside end of the insert type earphone (Ito, fig. 1, abstract). It would have been obvious to modify the system of Fischer and Rast with its dual controlled headset to be utilized as ear inserts as taught in Ito (Ito, fig. 1, abstract) for the purpose of making the system lighter to carry around.

Claims 12 & 14 have been analyzed and rejected according to claims 1-2.

Claims 4-5 & 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fischer, US Patent Pub. 20020003889 A1 and Rast, US Patent Pub. 20010046304 A1 as applied to claim 1 above, in view of Boesen, US Patent 6,560,468 B1.

Re Claim 4, Fischer and Rast disclose the system as claimed in claim 1, the outer surface of at least one of the controllers includes a second button control area (*Fischer, fig. 3; para 0008: right side of headphone system/first controller carries a plurality of controls*), the controller being arranged to send the corresponding control signal only if the second button control area is touched (*Fischer, fig. 3; para 0008: right side of headphone system/first controller carries a plurality of controls*), but fails to disclose the second touch-sensitive area touched substantially by the ear when the controller is substantially worn in or by a human ear as taught in Boesen (*Boesen, col. 3, lines 37-65: conduction sensor is touch sensitive to the bone in the ear*). It would have been obvious to use a conduction sensor of Boesen (*Boesen, col. 3, lines 37-65: conduction sensor is touch sensitive to the bone in the ear*) within Fischer for the purpose of the system being dynamic.

Re Claim 5, the combined teachings of Fischer, Rast and Boesen disclose the system as claimed in claim 1, wherein the outer surface of at least one controller includes a second touch sensitive area and is arranged to send a second control signal to the device if the second control button area is touched (*Fischer, fig. 3; para 0008: right side of headphone system/first controller carries a plurality of controls*).

Claims 17-19 have been analyzed and rejected according to claim 4.

Contact

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GEORGE C. MONIKANG whose telephone number is

(571)270-1190. The examiner can normally be reached on M-F. alt Fri. Off 7:30am-5:00pm (est).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chin Vivian can be reached on 571-272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/George C Monikang/
Examiner, Art Unit 2614

12/8/2009

/Vivian Chin/
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